IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU**
**&**
**THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

**WP(C).No. 2048 of 2004(R)**
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PETITIONER:
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SAMATHA LAW SOCIETY (ER.896/98),
REPRESENTED BY ITS GENERAL SECRETARY P.A.KUMARAN,
S/O. ANANDAN (LATE),
AGED 62 YEARS,
RESIDING AT HOUSE NO.37/2668,
VAILOPPILLIL LANE, AZAD ROAD,
COCHIN-17.

BY ADV. SRI.M.R.RAJENDRAN NAIR
ADV. SRI.R.SREERAJ
ADV. SRI.M.R.HARIRAJ
ADV. SMT.REKHA VASUDEVAN
ADV. SMT.VINEETHA B.
ADV. SRI.M.R.SUDHEENDRAN

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.

2. NAIR SERVICE SOCIETY (CORPORATE
EDUCATIONAL AGENCY),
REPRESENTED BY ITS GENERAL SECRETARY,
N.S.S. HEAD QUARTERS, PERUNNA,
CHANGANASSERY.

3. S.N.D.P.YOGAM (CORPORATE EDUCATIONAL AGENCY),
REPRESENTED BY ITS GENERAL SECRETARY,
KOLLAM.

4. CORPORATE MANAGER,
SACRED HEART CORPORATE EDUCATIONAL AGENCY OF THE CMI,
RAJAGIRI, KALAMASSERY.

5. CORPORATE MANAGER,
VERAPOLY ARCH DIOCESE'S SCHOOL,
ST.ALBERT'S SCHOOLS,
ST. ALBERT'S SCHOOL, ERNAKULAM.

6. CORPORATE MANAGER,
ERNAKULAM ARCH DIOCESE'S SCHOOLS,
ARCH BISHOP'S HOUSE,
BROADWAY, ERNAKULAM.

*ADDL.R7. KERALA PRIVATE (AIDED ) SCHOOL MANAGERS' ASSOCIATION,
DISTRICT COMMITTEE,
P.O. EDARIKODE,
MALAPPURAM – 676 501
REPRESENTED BY THE GENERAL SECRETARY.

*(*ADDL. RESPONDENT NO.7 IS IMPLEADED AS PER ORDER DATED 11.12.2006 IN I.A.NO. 12100 OF 2006)*

*ADDL.R8. MAMBARAM MADHAVAN,
MANAGER,
MAMBARAM HIGHER SECONDARY SCHOOL,
P.O. MAMBARAM, KANNUR DISTRICT.

*ADDL.R9 C.I. MAHMOOD,
MANAGER,
N.A.M. HIGHER SECONDARY SCHOOL,
PERINGATHUR.

*ADDL.R10 P.K. RAGHAVAN,
MANAGER,
KUTHUPARAMBA HIGH SCHOOL,
KUTHUPARAMBA, KANNUR DISTRICT.

*ADDL.R11 P.C. MADHAVIKUTTY,
MANAGER,
R.O. AMALA U.P. SCHOOL,
P.O. PINARAYI, KANNUR DISTRICT.

*(*ADDL.R8 TO R11 ARE IMPLEADED AS PER ORDER DATED 11.12.2006 IN I.A. 12819 OF 2006.)*

*ADDL.R12 K. GOKULAN,
MANAGER OF MANNOOR NORTH AUP SCHOOL,
MANNOOR, KOZHIKODE.

*ADDL.R13 C.K. VIJAYAKRISHNAN,
MANAGER OF MANNOOR KRISHNA AUP SCHOOL,
KADALUNDI, KOZHIKODE.

*ADDL.R14 SMT. K.P. SAROJINI,
MANAGER OF RAMAVILASOM HIGHER SECONDARY SCHOOL,
CHOKLI, THALASSERY DISTRICT.

*ADDL.R15 K.M. MUHAMMED,
MANAGER OF UMBICHY HAJI HIGHER SECONDARYB SCHOOL,
CHALIYAM, KOZHIKODE.

*ADDL.R16. M. SASIDHARAN,
MANAGER OF NALLUR EAST AUP SCHOOL,
PERUMUGHAM,
KOZHIKODE.

*ADDL.R17 P.C. KANAKARAJ,
MANAGER OF AZHIYUR EAST U.P.SCHOOL.

*ADDL.R18 K. PADMANABHAN NAIR,
MANAGER OF PERUMANNA ALP SCHOOL,
KOZHIKODE.

*ADDL.R19. SMT. V. PADMAVATHY,
MANAGER OF NARIKUNNI AUP SCHOOL,
THAMASERRI DISTRICT.

*ADDL.R20 ARAVINDAKSHAN K.,
MANAGER OF C.M. HIGH SCHOOL,
MANNOOR, CALICUT.

*ADDL.R21 M. ASOKAN,
MANAGER OF VENGERI AUP SCHOOL,
CALICUT.

*ADDL.R22 K. GANAGADHARAN NAIR,
MANAGER OF BADIROOR ALP SCHOOL,
KOZHIKODE.

*ADDL.R23 K.P. BHASKARAN,
MANAGER OF ALP SCHOOL,
KALPATHOOR.

*(*ADDL. RESPONDENTS 12 TO 23 ARE IMPLEADED AS PER ORDER DATED 11.12.2006 IN I.A.NO. 13464 OF 2006)*

*ADDL.R24 T.O. BHASKAR,
MANAGER,
M.G.L.P. SCHOOL, (AIDED)
M. PUDUR, GOVINDAPURAM,
KOLLENGODE (SUB DT.)

*ADDL.R25 S. RADHAKRISHNAN,
MANAGER,
AUP SCHOOL,
CHALAVARA,
CHALAVARA P.O., SHORNUR SUB DISTRICT.

*ADDL.R26 K. UNNINARAYANAN,
MANAGER,
A.K.N.M. -M.A. MEMORIAL HIGH SCHOOL,
KATTUKULAM,
KATTUKULAM SOUTH P.O.,
PIN- 679514
CHERPALCHERY SUB DISTRICT.

*ADDL.R27 P. NARAYANAN MOOSAD,
MANAGER,
A.M.L.P. SCHOOL,
CHAMAPARAMBA,
P.O. NATTUKAL,
(VIA) MANNARKKAD COLLEGE,
MANNARKKAD SUB DISTRICT
PIN -678 583

*ADDL.R28 V. JANARDHANAN,
MANAGER,
ALPS KOTTOPPADAM – EAST,
P.O. KOTTOPPADAM – 678 583.
MANNARKKAD SUB DISTRICT.

*ADDL.R29 T.A. BHARGAVI AMMA,
MANAGER,
VELAYUDHAN MEMORIAL HIGH SCHOOL,
VADAVANNUR, PALAKKAD DISTRICT.

*ADDL.R30. T.K. GOPINATHAN,
MANAGER,
DEVAKI MEMORIAL SENIOR BASIC SCHOOL,
KAKKAYUR P.O.
PALAKKAD DISTRICT.

*ADDL.R31 E.K. HARIDAS,
MANAGER,
E.K.E.M.U.P. SCHOOL,
THALUR, KUDALLUR P.O.,
PALLAVUR (VIA), PALAKKAD DISTRICT.

*ADDL.R32 M.S. SWAMINATHAN
MANAGER,
M.M.M.S.B. SCHOOL,
KODUVAYUR – 678 501.
PALAKKAD DISTRICT.

*ADDL.R33 T. DIVAKARAN,
MANAGER,
AIDED L.P. SCHOOL,
AMBALAPARA,
P.O. AMBALAPARA – 679 512.
OTTAPPALAM, PALAKKAD DISTRICT.

*ADDL.R34 K. NARAYANAN,
MANAGER,
A.B.U.P. SCHOOL,
MANKARA WEST,
(PO) GANDHI SEVASADAN – PERUR
PALAKKAD DISTRICT- 679 302

*ADDL.R35 M.N. BALASUBRAMANIAN,
MANAGER,
M.N.K.M. HIGHER SECONDARY SCHOOL,
CHITTILEMCHERRY – 678 704,
PALAKKAD DISTRICT.

*ADDL.R36 V. KANAKALATHA,
MANAGER,
VALLAPPUZHA H.S. SCHOOL,
SHORNUR SUB DISTRICT.

*ADDL.R37 RAMAKRISHNAN K.P.
MANAGER,
S.P.M.L.P. SCHOOL,
MULANHUR P.O. - 679 511
CHUNANGAD VIA, OTTAPPALAM.

*ADDL.R38 K. UNNIKRISHNAN,
MANAGER,
ARIYOOR THEKKUMMURI J.B. SCHOOL,
P.O. THOTTAKARA,
OTTAPPALAM – 2.

*ADDL.R39 M.T. NARAYANANKUTTY,
MANAGER,
AIDED LOWER PRIMARY SCHOOL ,
MELUR,
P.O. MELUR,
(VIA) PANAMANNA, OTTAPPALAM.

*ADDL.R40 K.P. SUSEELA,
MANAGER,
AIDED JUNIOR BASIC SCHOOL,
PALAPPURAM, OTTAPPALAM,
PIN- 679 103, PALAKKAD DISTRICT.

*ADDL.R41 M. UNNIKRISHNAN,
MANAGER,
AIDED MAPPILA UPPER PRIMARY SCHOOL,
CHUNANGAD,
OTTAPPALAM – 679 511

*ADDL.R42 K.V. MADHAVANKUTTY,
MANAGER,
ALPS, MANGALAMKUNNU,
P.O. KATTUKULAM – 679 514
PALAKKAD DISTRICT.

*ADDL.R43 P. KUMARAN,
MANAGER,
KARIMPUZHA HIGHER SECONDARY SCHOOL,
THOTTARA,
P.O. KARIMPUZHA – 679 513
PALAKKAD DISTRICT.

*ADDL.R44 UNNIKRISHNAN A.P.,
MANAGER,
A.L.P. SCHOOL,
MUNDANATTUKARA,
PAVUKKONAM
VANIAMKULAM – 679 522.

*(*ADDL..RESPONDENTS 24 TO 44 ARE IMPLEADED AS PER ORDER DATED 11.12.2006 IN I.A. NO. 13528 OF 2006 )*

BY ADDL. ADVOCATE GENERAL SHRI VENGANOOR K. CHANDRASEKHARAN NAIR.
BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM
ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
ADV. SRI.P.GOPAL
ADV. SRI.A.N.RAJAN BABU
ADV. SRI.V.K.BEERAN, ADDL.ADVOCATE GENERAL
ADV. SRI.T.H.ABDUL AZEEZ
ADV. SRI.IMTHIYAZ AHAMED
ADV. SRI.SHIRAZ ABDULLA
ADV. SRI.T.P.KELU NAMBIAR (SR.)
ADV. SRI.P.M.PAREETH
ADV. SRI.P.R.VENKETESH
ADV. SRI.P.K.SURESH KUMAR
ADV. SRI.K.P.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**WP(C).No. 2048 of 2004(R)**

## APPENDIX

**PETITIONERS' EXHIBITS:**

| | | |
|---|---|---|
| EXHIBIT P1 | : | TRUE COPY OF THE JUDGMENT DATED 30.11.2001 OF THE HONOURABLE COURT IN O.P., 22024/2000 |
| EXHIBIT P2 | : | TRUE COPY OF THE G.O.(MS) No. 181/03/G.Edn. DATED 05.07.2003 ISSUED BY THE 1ST RESPONDENT. |

/TRUE COPY/

**H.L. DATTU, C.J. & K.T. SANKARAN, J.**

**.....**

**W.P.(C) No. 2048 OF 2004**

**.....**

**Dated this the 8th October, 2007**

**J U D G M E N T**

**H.L. Dattu, C.J.:**

This is the second round of litigation by the very same petitioner. This is also a Public Interest Litigation. In this petition filed under Article 226 of the Constitution of India , the petitioner-Society requests this court to quash Ext. P2 Government Order dated 05.07.2003 and secondly, to declare that Section 9 and 11 of the Kerala Education Act 1958 as unconstitutional and void.

2. In so far as the second prayer is concerned, in our opinion, the same need not be considered by us for the reason that a Division Bench of this court, by order dated 30.11.2001 in O.P.No.22024 of 2000 and connected matters, has observed as under:-

> *"24. But we do not think that we need straight away strike down Section 11 of the Act as it now stands as arbitrary and as violative of Articles 14, 19 or 21 of the Constitution. We think, especially in the absence of a proper counter affidavit which meets the very serious allegations regarding the irregularities made in these Original Petitions that the State should be given an opportunity to consider this serious aspect in the interests of ensuring quality education and to prevent charges of corruption to consider the question for itself and to take a decision thereon leaving it to the petitioners to approach this court if they feel aggrieved by the inaction of the State to take any remedial*

*measures or by any decision that may be taken by the State in that regard. Of course, it is not normally the part of the duty of this court to direct what Legislation must be brought forward by the State. That is a matter for the Legislature. When serious constitutional aspects are highlighted and the pernicious practices are alleged, it is necessary for the State to consider whether a tightening up of the process is called for in the circumstances. But this court cannot obviously direct the State to restore the original Section 11 of the Kerala Education Act to the statute book. But in the light of the facts disclosed it appears to us that it is the plain duty of this court to draw the attention of the Government to the evil projected by the petitioners and to consider whether remedial measures are not warranted in such circumstances. Of course, whether the old Section 11 of the Act should be re-enacted replacing the present Section 11 of the Act is a matter for the Legislature or Government to consider. But we think that in exercise of our jurisdiction under Article 226 of the Constitution of India, it is permissible, even necessary to direct the State to bestow its attention to the misuse or abuse of the power conferred by Section 11 of the Act on Managers of aided schools and also to consider whether steps should not be taken to avert the evil or to ensure that quality is not sacrificed at the altar of avarice and self interest. At last it is necessary for the Government to look into this aspect in detail in the interests of education and maintaining the proper standards in education.*

*25. In this view, we dispose of these Original Petitions and the Writ Appeal by directing the State of Kerala to consider whether any suitable changes should be brought about in the scheme of Sections 9 and 11 of the Act as it now stands with particular reference to the scheme as it was originally envisaged and in fact enacted after the Supreme Court had*

*given its opinion that the scheme was constitutionally valid and did not offend Article 30 (1) of the Constitution of India. It is necessary for the Government to consider whether the evil sought to be averted by enacting the Kerala Education Act has been achieved by enacting Section 11 in its present form and if it is necessary, to do what is necessary to make the scheme more beneficial to the State and to the citizens seeking quality education."*

3. This Court after detailed consideration of the legal issues involved had thought it fit not to strike down Section 11 of the Act, but had left it to the State Government to consider whether any changes require to be made in Section 11 of the Act.

4. The State Government, after considering the observations made by this Court has issued the order dated 5.7.2003 and in that they have stated that they have no intention to change the prevailing provisions under Sections 9 and 11 of the Kerala Education Act. The order passed by the State Government dated 5.7.2003 is as under:-

*"As per judgment read above the Hon'ble High Court directed Government to consider whether any suitable changes should be brought about in the scheme of sections 9 and 11 of K.E. Act as it now stands with particular reference to the scheme as it was originally envisaged and in fact enacted after Supreme Court had given its opinion that the scheme was constitutionally valid and did not offend Article 30(1) of the Constitution of India.*

*2. Government have examined the matter in detail and are pleased to order that it has no intention to change the prevailing provisions under sections 9 and 11 of K.E. Act. "*

5. As we have already noticed, this court while disposing of O.P. No. 22024 of 2000 and connected matters, had only directed the State Government to consider as to whether any suitable changes require to be made in the scheme of Sections 9 and 11 of the Kerala Education Act. The State Government is of the view that such changes in the scheme of Sections 9 and 11 are not required. This appears to be the policy decision of the State Government. A policy decision, as is well known, should not be lightly interfered with by this court, except in those exceptional circumstances that the Apex Court has pointed out in some of the decisions. Those exceptional circumstances are neither pleaded nor argued. Therefore, we do not intend to embark upon the judicial review of the policy decision of the State Government.

6. Accordingly, we desist from interfering with the policy decision of the State Government dated 5.7.2003 and insofar as second prayer is concerned, since a decision has already been rendered by a Division Bench of this Court, which, in our opinion, is binding on us, we reject the same. Accordingly, the Writ Petition requires to be rejected and it is rejected.

Ordered accordingly.

**H.L. DATTU,**
**CHIEF JUSTICE.**

**K.T. SANKARAN,**
**JUDGE.**

**lk/DK.**